

ORDINANCE NO. 07-2022

Baker, Bullock, Kepple, Litten,  
O'Malley, Rader, Shachner

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council declaring improvement to real property within the city of Lakewood, Ohio to be a public purpose; exempting such improvement from real property taxation; requiring the owners of the property to make service payments in lieu of real property taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of service payments, making related authorizations pursuant to Ohio Revised Code Sections 5709.41, 5709.42, 5709.43 and 5709.83; and authorizing a service payment agreement in connection with the same.

WHEREAS, Ohio Revised Code ("R.C.") Sections 5709.41, 5709.42 and 5709.43 (the "TIF Statutes") provide that this Council may, under certain circumstances, declare Improvement (as defined below and in the TIF Statutes) to certain parcels of real property located in the City of Lakewood, Ohio (the "City") to be a public purpose and exempt from real property taxation, provide for the payment service payments in lieu of real property taxes by the owners of such property and establish an urban redevelopment tax increment equivalent fund for the deposit of such service payments in lieu of taxes; and

WHEREAS, West 117 Development, LLC, West 117 Development Fieldhouse LLC, and West 117 Development Phantasy LLC (collectively, the "Developers") desire to construct or cause to be constructed a commercial development (the "Project") on certain parcels of real property described and depicted on Exhibit A attached hereto (the "Property") within the City; and

WHEREAS, the Developers have requested that the City enact this Ordinance pursuant to the TIF Statutes to assist the Developers with the development of the Project; and

WHEREAS, in order to enact this Ordinance, the TIF Statutes specify that (1) the City must hold fee title to the Property prior to the adoption of this Ordinance, and (2) the Property must be conveyed or leased to any person either before or after the adoption of this Ordinance; and

WHEREAS, as authorized by Ordinance No. 23-2021, passed July 19, 2021, by two limited warranty deeds each dated July 22, 2021, the current owners of the Property have conveyed fee title to the Property to the City, and by two quitclaim deeds each dated July 22, 2021, the City has conveyed fee title to the Property back to the current owners of the Property; and

WHEREAS, the aforementioned deeds have been recorded in the records of the Cuyahoga County Recorder; and

WHEREAS, the City has implemented several planning initiatives to further its economic development efforts, including, but not limited to, the Gold Coast Master Plan, the Lakewood Park Master Plan, the Detroit Avenue Streetscape Plan, the Kaufman Park Master Plan and the Uptown Madison Parking Study (collectively, the "Development Plans"); and

WHEREAS, as evidenced by the Development Plans, the City is “engaged in urban redevelopment” as provided in Ohio Revised Code (“R.C.”) Section 5709.41; and

WHEREAS, in connection with the Project, the Developers desire to construct certain private improvements (the “Developer Improvements”) as defined and described in Exhibit B attached hereto; and

WHEREAS, in furtherance of the development efforts articulated in the Development Plans, the City desires to pass this Ordinance to assist the Developers with the Project and the Developer Improvements; and

WHEREAS, as required by the TIF Statutes and R.C. Section 5709.83, the City has provided all required notices to the Lakewood City School District (the “School District”), or such notice has been waived; and

WHEREAS, the City is in receipt of a proposed Service Payment Agreement with respect to the Project (the “Service Payment Agreement”) between the City and the Developers, which Service Payment Agreement is on file with the City and attached hereto as Exhibit C, and sets forth the terms regarding payment of service payments and reimbursement to the Developers of a portion equal to 90% of the same, up to a maximum of \$5,000,000, all in accordance with this Ordinance and the Development Agreement dated July 21, 2021 (the “Development Agreement”) by and between the City and the Developers; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that moving forward with the development of this property quickly is in the best interest of the public; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Subject to the terms of the Development Agreement, one hundred percent (100%) of the increase in the assessed value of each parcel within the Property (each a “Parcel”) after the date that the City obtained fee title to the Property (each of which increase in assessed value is an “Improvement” as defined in R.C. Section 5709.41) shall be a public purpose and shall be exempt from real property taxation commencing for each Parcel with the first tax year that begins after the effective date of this Ordinance and in which an Improvement on that Parcel would first appear on the tax list and duplicate of real and public utility property were it not for the exemption granted by this Ordinance, and ending for each Parcel on the earlier of (a) thirty (30) years after such commencement, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes.

Section 2. As provided in R.C. Section 5709.42, the owner of any Parcel with an Improvement is required hereby to make annual payments in lieu of taxes to the Cuyahoga County

Treasurer (the "County Treasurer") on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from taxation (with the payments in lieu of tax, including any penalties and interest, being the "Service Payments"). The County Treasurer shall remit all Service Payments to the City for deposit in the Studio West Urban Redevelopment Tax Increment Equivalent Fund (the "Fund") established in Section 3 hereof, except for amounts paid directly to the School District as provided in Section 4 hereof. This Council hereby authorizes the Mayor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those Service Payments and to make such arrangements as are necessary and proper for payment of the Service Payments. Any late payments shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. The Service Payments, and any other payments in connection with the Improvement which are received by the City in connection with any reduction required by R.C. Section 319.302, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the "Property Tax Rollback Payments"), shall be allocated and deposited in accordance with Sections 3 and 4 of this Ordinance.

Section 3. This Council hereby establishes the Fund, pursuant to and in accordance with the provisions of R.C. Section 5709.43, into which shall be deposited all of the Service Payments and Property Tax Rollback Payments distributed to the City with respect to the Improvement to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. Section 5709.42, except for amounts paid directly to the School District as provided in Section 4 hereof, and hereby appropriates all of the moneys deposited in the Fund from time to time to pay any costs associated with the Developer Improvements, including, but not limited to, the "costs of permanent improvements" described in R.C. Section 133.15(B).

The Fund shall remain in existence so long as Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, subject to the limits set forth in Section 1 hereof, after which said Fund shall be dissolved in accordance with R.C. Section 5709.43(D). Upon dissolution, any incidental surplus money remaining in the Fund shall be transferred to the City general fund as provided in R.C. Section 5709.43(D).

Section 4. The County Treasurer shall make semi-annual payments to the School District, solely from the Service Payments and Property Tax Rollback Payments deposited into the Fund, collectively in the amount equal to the property tax payments that the School District would otherwise have received from the Improvement had the Improvement not been exempted pursuant to this Ordinance. The County Treasurer shall remit all remaining Service Payments to the City for deposit in the Fund established in Section 3 hereof.

Section 5. This Council hereby authorizes the Mayor or other appropriate officers of the City to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance, including the execution and delivery of the Service Payment Agreement and such other agreements and instruments as may be necessary to implement this Ordinance and the filing of

one or more applications for exemption and any related forms in accordance with R.C. Section 5709.911.

Section 6. This Council hereby designates the tax incentive review council (the "TIRC") established in Ordinance No. 06-2021, passed March 1, 2021, as the TIRC that shall annually review the exemptions provided pursuant to this Ordinance as required by R.C. Section 5709.85.

Section 7. In accordance with Ohio Revised Code Section 5709.832, the City hereby determines that no employer located on the Property shall deny any individual employment based on considerations of race, religion, sex, disability, color, national original, or ancestry.


Section 8. Pursuant to R.C. Section 5709.41(E), the Mayor is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Department of Development ("DOD") within fifteen (15) days after its passage. On or before March 31 of each year that the exemption set forth in Section 1 hereof remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director of DOD the status report required under R.C. Section 5709.41(E).

Section 9. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

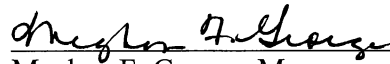
Section 10. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council, this ordinance shall take effect and be in force immediately upon adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted 3/7/2022

  
Daniel J. O'Malley, President of Council

  
Maureen M. Bach, Clerk of Council

Approved 3/9/22

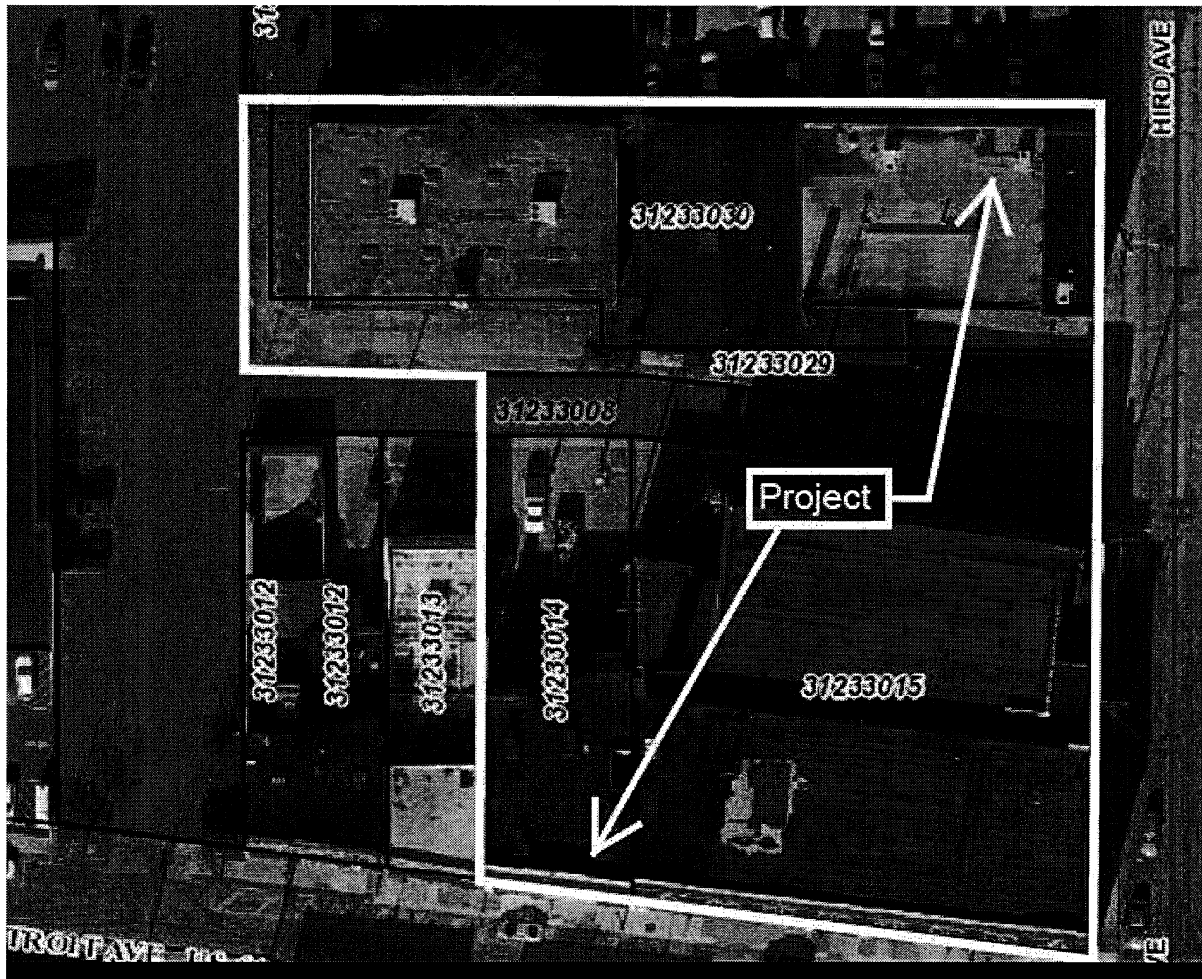
  
Meghan F. George, Mayor

## EXHIBIT A

### PROPERTY

The Property is the real estate situated in the City of Lakewood, Cuyahoga County, Ohio consisting of the following tax year 2021 parcel numbers:

Parcel Number	Address
31233014	11794 Detroit Avenue and 11816 Detroit Avenue
31233015	11794 Detroit Avenue and 11816 Detroit Avenue
31233029	1384 Hird Avenue
31233030	1384 Hird Avenue



## **EXHIBIT B**

### **DEVELOPER IMPROVEMENTS**

The Developer Improvements consist of all capital improvements and costs associated with the following:

Construction and redevelopment of a 1.1 acre site for commercial purposes, and all related improvements and appurtenances, as are more fully described in, and in accordance with, the Development Agreement.

**EXHIBIT C**  
**SERVICE PAYMENT AGREEMENT**

[Attached]

## **SERVICE PAYMENT AGREEMENT**

**THIS SERVICE PAYMENT AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_ day of March, 2022, by and among the **CITY OF LAKEWOOD, OHIO**, a municipal corporation (the “City”), **WEST 117 DEVELOPMENT, LLC**, an Ohio limited liability company, (the “West 117 Developer”), **WEST 117 DEVELOPMENT FIELDHOUSE LLC**, an Ohio limited liability company (the “Fieldhouse Developer”), and **WEST 117 DEVELOPMENT PHANTASY LLC** (the “Phantasy Developer,” and together with the West 117 Developer and the Fieldhouse Developer, the “Developers”).

### **WITNESSETH:**

WHEREAS, the Developers are pursuing the redevelopment of an approximately 1.1 acre site currently identified as 1384 Hird Avenue (Parcel IDs 312-33-030, 312-33-029) (the “Fieldhouse”) and at 11794 Detroit Avenue and 11816 Detroit Avenue (Parcel IDs 312-33-015, 312-33-014) (“Phantasy”), and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “TIF Site”); and

WHEREAS, the Developers intend to develop the TIF Site into a mixed-used development to be known as Studio West 117 (the “Development”); and

WHEREAS, the TIF Site is located within the municipal corporate boundaries of the City and the territorial boundaries of the County of Cuyahoga, Ohio (the “County”); and

WHEREAS, upon completion, the Development is projected to significantly increase the assessed valuation of the TIF Site; and

WHEREAS, the Phantasy Developer and the Fieldhouse Developer, in their capacity as the respective owners in fee simple interest of portions of the TIF Site, may in the future convey all or any portion of or interest in any of the real property comprising the TIF Site to subsequent owners of all or any portion of or interest in any of the real property comprising the TIF Site (singularly an “Owner” and collectively the “Owners”); and

WHEREAS, pursuant to Ohio Revised Code (“O.R.C.”) Sections 5709.41 through 5709.43 (together with related provisions of the Ohio Revised Code, the “TIF Act”), and Ordinance No. [REDACTED] passed by the Council of the City (the “Council”) on March 21, 2022, a copy of which is attached as Exhibit B attached hereto and incorporated herein by this reference (the “TIF Ordinance”), the City has, among other actions: (1) declared 100% of the improvement to the real property (the “Improvement”) included in the TIF Site to be a public purpose and exempt from real property taxation for the Exemption Period (as defined herein) (the “TIF Exemption”); (2) provided for service payments in lieu of taxes (the “Service Payments”), as an obligation running with the land for the Exemption Period (as defined herein) payable with respect to the real property comprising the TIF Site; (3) authorized the use of the Service Payments for such uses by the City as permitted under Ohio law, including, without limitation, payment of the costs of any improvements for urban redevelopment purposes and other purposes described in the TIF Ordinance related to the TIF Site as authorized in O.R.C. Section 5709.41; and (4) determined to enter into this Agreement with the Developers, as initial Owners of the entire TIF Site during the term of construction of the Development, to provide for, among other things, the payment of the Service Payments by the Owners with respect to the TIF Site; and

WHEREAS, pursuant to the TIF Act, the TIF Ordinance, and this Agreement, each of the Owners desires to agree, for itself and for each of its successors and assigns as Owners of all or any portion of any of the real property comprising the TIF Site, to pay Service Payments in an amount equal to the amount of



real property taxes that would have been paid with respect to the real property comprising the TIF Site had the TIF Exemption not been granted by the City under the TIF Act and the TIF Ordinance and applied for and allowed thereunder; and

WHEREAS, the parties have entered into a Development Agreement dated July 21, 2021 ("Development Agreement") which, among other things, lays out the agreed upon plan and schedule of development, including restrictions on use of the TIF Site; and

WHEREAS, the obligation of the City to provide the statutory service payments generated from the Project (the "Project TIF Revenue") for the Development in accordance with this Agreement is contingent upon the satisfaction of all of the contingencies with respect to the Development contained in the Development Agreement entered into between parties.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the City and the Developers covenant, agree, and bind themselves as follows:

SECTION 1. TAX EXEMPTION; PRIORITY OF EXEMPTIONS. In accordance with O.R.C. Section 5709.41, and subject to the terms of the Development Agreement, the parties hereby agree that the TIF Exemption is a non-school 100% exemption from real property taxation for an Improvement for a period commencing for each parcel with the first tax year that begins after the effective date of the TIF Ordinance and in which an Improvement on that Parcel would first appear on the tax list and duplicate of real and public property were it not for the TIF Exemption, and ending for each Parcel on the earlier of (i) 30 years after such exemption commenced, or (ii) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes (the "Exemption Period"). Each Owner shall make Service Payments in an amount equal to the real property taxes that would have been payable with respect to the Improvement owned by that Owner had an exemption with respect to such Improvement not been applied for by the Owner and allowed under O.R.C. Section 5709.41. Each Service Payment to be made under this Agreement will be made on a semi-annual basis in an amount equal to one-half of the annual property tax amount that would have been payable had the TIF Exemption not been granted. The Service Payments shall be due and payable on each January 15 and July 15 or such other date as the Treasurer of Cuyahoga County, Ohio (the "County Treasurer") determines property taxes are due (such date being hereinafter referred to as a "Service Payment Date") until expiration or termination of the TIF Exemption.

SECTION 2. OBLIGATION TO MAKE SERVICE PAYMENTS. In the event that any Service Payment, or any installment thereof, is not paid when due by any Owner on any Service Payment Date, to the extent that the County does not impose a late fee or delinquency charge, the City may impose and collect a late payment charge, payable to the City, in the amount of the charges for late payment of real property taxes, including penalty and interest, which would have been paid pursuant to O.R.C. Section 323.121 on the delinquent amount.

It is intended and agreed that the covenants provided in this Agreement shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by the City. It is further intended and agreed that this Agreement and the Development Agreement and the covenants therein shall remain in effect for the full period of the TIF Exemption permitted in accordance with the requirements of the Development Agreement, the TIF Act, and the TIF Ordinance enacted pursuant thereto. Each Owner shall only be responsible for making Service Payments that become due and payable during the period of that Owner's ownership of all or any portion of the TIF Site and only with respect to the portion of the TIF Site owned by the Owner. Upon satisfaction of each Owner's obligations under this Agreement and termination of the obligations of the Owners to make the

Service Payments, the City shall, upon the request of an Owner, execute an instrument in recordable form evidencing such termination and releasing the covenants running with the land set forth in the applicable deed. The parties acknowledge that the provisions of O.R.C. Section 5709.91, which specify that the Service Payments shall be treated in the same manner as taxes for all purposes of the lien described in O.R.C. Section 323.11, including but not limited to, the priority of the lien and the collection of Service Payments, shall apply to this Agreement. The City and each Owner shall perform such acts as are reasonably necessary or appropriate to effect, claim, preserve and maintain the exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

No Owner shall, under any circumstances, be required to pay both real property taxes with respect to any portion of an Improvement and Service Payments for any tax year with respect to that portion of an Improvement, whether pursuant to O.R.C. Section 5709.42, the TIF Ordinance, this Agreement or any other applicable law.

### SECTION 3. ADDITIONAL OBLIGATIONS.

A. Should any Owner default hereunder, such Owner shall jointly and severally pay in addition to the Service Payments such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) incurred by the City to enforce the provisions of this Agreement.

B. Within five (5) business days following the effective date of this Agreement, Developer shall, at its sole cost and expense, cause this Agreement to be recorded in the real property records of the County, it being understood and agreed that the lien of this Agreement shall, in accordance with O.R.C. Sections 323.11 and 5709.91, be prior to any mortgage, assignment, lease or other conveyance of any part of or interest in the TIF Site, and prior to any security instrument encumbering all or any part of or interest in the Improvement; provided, however, that nothing contained in this Agreement shall be construed to permit acceleration of the Service Payments beyond the current year that such Service Payments are due.

C. The obligation to perform and observe the agreements on the Owners' parts contained herein shall be binding and enforceable against each and every Owner by the County Treasurer, and shall also, to the extent permitted by law, be enforceable by the City.

D. The obligation of the City to provide the Project TIF Revenue for the Development in accordance with this Agreement is contingent upon the satisfaction of all of the contingencies with respect to the Development contained in the Development Agreement entered into between parties as more particularly provided therein.

SECTION 4. BINDING NATURE OF OBLIGATIONS; SECURITY FOR PAYMENT. Anything herein to the contrary notwithstanding, upon the effective date of this Agreement, the Owners' obligation hereunder to pay Service Payments and to perform and observe any other agreements on their part contained herein, shall be absolute and unconditional and shall be covenants running with the land and shall be binding and enforceable by the City against the Owners, but only to the extent of the respective Owners' obligations and only with respect to its or their interest in the TIF Site and the Improvement, or any part thereof or any interest therein. Each Owner's obligation to pay the Service Payments shall be secured by a lien on its interest in the TIF Site and the Improvement, as provided by law and described in Section 12. Notwithstanding any provision of this Agreement to the contrary, each Developer's and each Owner's liability under this Agreement shall be limited its right, title and interest in the Development. In no event shall any Developer, any other Owner, or any of their respective employees, officers, managers, directors,

partners, beneficiaries, members, joint venturers, shareholders, owners or affiliates be personally liable for any obligations hereunder.

SECTION 5. PAYMENT OF TAXES; CONTESTS. Each Owner shall pay, cause, or require to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the TIF Site (except as otherwise provided herein) or any personal property or fixtures installed or brought therein or thereon (including, without limiting the generality of the foregoing, and by way of example, any taxes levied against an Owner with respect to the receipts, income or profits from leasing or subleasing space within the Improvement, which, if not paid, may become or be made a lien on all or any portion of the TIF Site).

Notwithstanding the foregoing, and pursuant to the Development Agreement, the Developer or any individual Owner may, at their own expense and in good faith, contest the amount of any property taxes. The Developers intend to consider the effect of changes in property values for all affected parties when participating in valuation challenges related to the TIF Site, as either a complainant or a counter-complainant.

SECTION 6. NOTICES. All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by registered or certified mail, postage prepaid: if to the City, at 12650 Detroit Ave. Lakewood, Ohio 44107, with a copy to the Law Department at 12650 Detroit Ave. Lakewood, Ohio 44107, if to the Fieldhouse Developer, at 14665 Morgan Trail, Novelty, Ohio 44072, with copies to Walter Haverfield LLP, 6120 Parkland Blvd., Suite 100, Cleveland, Ohio 44124, Attn: Mark B. Radefeld, if to the Phantasy Developer, at 14665 Morgan Trail, Novelty, Ohio 44072, with copies to Walter Haverfield LLP, 6120 Parkland Blvd., Suite 100, Cleveland, Ohio 44124, Attn: Mark B. Radefeld, and, if to the Owners (if not the Phantasy Developer or Fieldhouse Developer), at their address or addresses of record on file in the office of the County Auditor of Cuyahoga County, Ohio. The City, the Developer, and any individual Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, designations, certificates, requests or other communications shall be sent, and shall provide copies of all such communications to any of the others to all of the others.

SECTION 7. EXEMPTION APPLICATIONS. When appropriate, the Owner, with the City's assistance, shall coordinate the filing of the required DTE form (or any other applicable or required forms) to evidence the City's application for exemption from real property taxation with respect to the TIF Site pursuant to O.R.C. Section 5709.911(A)(1). The City, the Developer, and any individual Owner shall cooperate with each other, and execute such further documents and provide such further information as are reasonably required in connection with the filing and processing of such applications. The parties hereto intend that such exemption from real property taxation will initially apply as provided in Section 1 above and shall use due diligence and commercially reasonable efforts to that end. The Developers and any individual Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemptions in force, not permitting the same to lapse or be suspended or revoked for any reason within each Developer's or any individual Owner's control.

SECTION 8. EFFECTIVE DATE; DURATION OF AGREEMENT. This Agreement shall become effective only after its execution and delivery by the parties. Unless sooner terminated pursuant to the terms hereof, this Agreement shall expire at the end of the Exemption Period or the termination of the Development Agreement, whichever occurs first. Upon expiration or termination of this Agreement, the City will cause this Agreement to be cancelled of record at the cost of the Owners.

SECTION 9. APPLICATION OF SERVICE PAYMENTS. The Service Payments shall be made by or on behalf of the Owners to the County Treasurer on or before the applicable Service Payment Dates. Upon receipt of the Service Payments from the County Treasurer, the City shall deposit the Service Payments in the TIF Fund (hereinafter, the "TIF Fund") established by or designated in the TIF Ordinance; provided, that all such amounts received by the City shall be allocated for the purposes set forth in the TIF Ordinance, including, without limitation (i) payment of the costs of any improvements for urban redevelopment purposes or other purposes provided in the TIF Ordinance related to the TIF Site as authorized in O.R.C. Section 5709.41; or (ii) other authorized uses by the City as permitted under Ohio law.

SECTION 10. REIMBURSEMENT OF DEVELOPER. The City shall pay to the West 117 Developer in accordance with the terms of this Agreement and the Development Agreement with respect to the Development for which a written requisition substantially in the form attached as Exhibit C (a "Written Requisition") is submitted to the City, the actual costs of such Development, including, but not limited to, the items of "costs of permanent improvements" contained in O.R.C. Section 133.15 (with the costs of the Development collectively referred to herein as the "Costs"). As set forth in Article XIII of the Development Agreement, such reimbursement shall be equal to 90% of the amounts on deposit in the TIF Fund, up to a maximum of \$5,000,000. Any City fees not paid by the Developers will be payable out of the TIF Fund before any reimbursement of the Developers provided below. Except as otherwise provided herein, the City shall pay all Project TIF Revenue on deposit in the TIF Fund to or as directed by the West 117 Developer within forty-five (45) days of receipt by the City (each, a "Payment Date") until all of the Costs have been paid in full. All payments to the West 117 Developer hereunder on each Payment Date shall be made pursuant to written instructions provided by the Developers. The parties agree that the West 117 Developer shall submit the Written Requisition for all Costs on behalf of Phantasy Developer and Fieldhouse Developer and the West 117 Developer shall be the developer entity receiving reimbursements pursuant to this Section 10.

Notwithstanding any other provision of this Agreement, the City's payment obligations hereunder are limited to the monies in the TIF Fund and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Developers do not have the right to have taxes or excises levied by the City for the payment of the Costs and interest thereon.

At any time of which there exists a default by any Developer under the Development Agreement, the City, at its option, may, but shall not be obligated to, by written notice to the West 117 Developer, cease disbursements of the proceeds from the TIF Fund until such Developer default has been cured, at which time all withheld payments will be disbursed. Furthermore, in the event of any such Developer default that extends beyond the applicable cure period in the Development Agreement, the City shall have those remedies identified in Section XV(B) of the Development Agreement.

SECTION 11. DEFAULTS AND REMEDIES. The following shall be events of default under this Agreement:

- (a) the failure of any Developer or any individual Owner to pay no later than the thirtieth calendar day following its due date any Service Payment, or any installment thereof, due by the Developer or any individual Owner, including any applicable late payment charges;
- (b) the failure of any Developer or any individual Owner to perform or observe any other covenant made by it in or pursuant to this Agreement, which failure shall continue for more than 30 days following written notice thereof by the City.
- (c) the failure by the City to provide the Project TIF Revenue to the West 117 Developer or their designees within forty-five (45) days following the deposit of such Project TIF

Revenue by the City into the TIF Fund; provided, however, that the Developers have complied with the cost certification requirements of Section 10 hereof.

- (d) the failure of the City to perform or observe any other covenant made by it in or pursuant to this Agreement, which failure shall continue for more than 30 days following written notice thereof by a Developer.

Upon the occurrence and continuation of any event of default, in addition to other rights of enforcement granted hereunder, the City or the Developers shall be entitled to exercise any and all remedies available to it hereunder, including the remedies described in Section 12, or under applicable law. Waiver by the City or any Developer of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement. The City and the Developers acknowledge and agree that the timely payment of Project TIF Revenue to the Developers is a material term of this Agreement.

SECTION 12. ENFORCEMENT; FORECLOSURE OF LIEN. The provisions of this Agreement with respect to the obligations of the Developers or any individual Owner may be enforced to the fullest extent permitted by law, by (i) the City, and (ii) the County Treasurer. It is the intention and agreement of each Owner that this Agreement shall constitute and be deemed to be a lien encumbering and running with the real property comprising the TIF Site to secure the obligations of the Owners to make Service Payments (and, if applicable, pay interest and penalties), which Service Payments are intended to have the same lien rights as real estate taxes and the same priority in accordance with O.R.C. Sections 323.11 and 5709.91. In furtherance of the foregoing, it is the intention of each Owner that the City may, upon the occurrence of an event of default set forth in Section 12 hereof, and without limiting any other right or remedy otherwise available to the City, take all such steps as may be legally available to it to foreclose upon such lien pursuant to the procedures and requirements of Ohio law relating to either delinquent real estate taxes or mortgage liens; provided, that nothing contained in this Agreement shall be deemed to authorize any acceleration of Service Payments due in future years. The provisions of this Agreement shall encumber and run with the real property comprising the TIF Site.

SECTION 13. COUNTERPARTS; CAPTIONS. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 14. SEVERABILITY. In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 15. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees; the Developers, their

employees, contractors, subcontractors and agents; and any individual Owner, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a state court of competent jurisdiction within the State of Ohio.

SECTION 16. ENTIRE AGREEMENT. This document (with its exhibits) contains the entire agreement between the parties and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes or amendments shall be made or be binding unless made in writing and signed by each of the parties.

SECTION 17. NO CITY EXPENDITURES IN YEAR OF EXECUTION. Nothing contained in this Agreement shall be construed to require the City to expend funds in connection with the performance of this Agreement in fiscal year 2022.

SECTION 18. ADDITIONAL DOCUMENTS; AMENDMENT. The parties hereto agree for themselves and their respective successors, assigns and transferees, to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement in compliance with all laws and ordinances controlling this Agreement. Any amendment to this Agreement must be in writing and signed by or on behalf of all parties or their respective permitted successors, assigns, and transferees.

SECTION 19. ASSIGNMENTS.

This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Except as otherwise discussed below, this Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Developers may, upon notice to the City, and without the prior written consent of the City, assign this Agreement to (i) a lender or its designee in connection with financing obtained for the Project (as described in XV(J) of the Development Agreement) or (ii) entities controlling, controlled by, or under common control with the West 117 Developer. Assignments conducted pursuant to the foregoing sentence shall be referred to herein as "Permitted Assignments". The Developers shall provide written notice to the City of any Permitted Assignments no later than ten (10) days prior to the execution of such assignment. All representations and warranties of the Developers and the City herein shall survive the execution and delivery of this Agreement. Notwithstanding the foregoing, the consent of the City shall be required for any assignment to (i) a party (or an affiliate) who has been involved in litigation or a material dispute opposite the City, (ii) a party (or an affiliate) that has had any contract with the City cancelled as a result of a default by such proposed Assignee (or its affiliates), or (iii) a party (or an affiliate) who owns commercial real estate or multi-family property in the City and who has on multiple occasions been subject to any action, including fines and material notices, as a result of building code, zoning or property management violations.

[Balance of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the City and the Developers have caused this Agreement to be executed in their respective names by themselves or their duly authorized officers, as applicable, all as of the date hereinbefore written.

**CITY OF LAKEWOOD, OHIO**

\_\_\_\_\_  
Meghan F. George, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Brian Corrigan, Director of Law

**WEST 117 DEVELOPMENT FIELDHOUSE  
LLC**, an Ohio limited liability company

By: West 117 Development, LLC,  
an Ohio limited liability company, its manager

By: BVF, LLC,  
an Ohio limited liability company, its  
manager

By: : \_\_\_\_\_  
Betsy Figgie, its member/manager

**WEST 117 DEVELOPMENT, LLC**,  
an Ohio limited liability company

By: BVF, LLC,  
an Ohio limited liability company, its  
manager

By: : \_\_\_\_\_  
Betsy Figgie, its member/manager

**WEST 117 DEVELOPMENT PHANTASY  
LLC**, an Ohio limited liability company

By: West 117 Development, LLC,  
an Ohio limited liability company, its manager

By: BVF, LLC,  
an Ohio limited liability company, its  
manager

By: : \_\_\_\_\_  
Betsy Figgie, its member/manager

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared the above named City of Lakewood by Meghan F. George, its Mayor, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of her personally and as such Mayor.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_,  
Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared the above named City of Lakewood by Brian Corrigan, its Director of Law, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of him personally and as such Director of Law.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_,  
Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public



STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared the above named West 117 Development Fieldhouse LLC, by Betsy Figgie, the member/manager of BVF, LLC, the manager of West 117 Development, LLC, its manager, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said limited liability company.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared the above named West 117 Development Phantasy LLC, by Betsy Figgie, the member/manager of BVF, LLC, the manager of West 117 Development, LLC, its manager, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said limited liability company.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared the above named West 117 Development, LLC, by Betsy Figgie, the member/manager of BVF, LLC, its manager, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said limited liability company.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

This instrument prepared by:

Robert F. McCarthy, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

## **EXHIBIT A**

### **Legal Description of the TIF Site**

#### **FIELDHOUSE PARCELS:**

##### **PARCEL NO. 1:**

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio and known as being part of Sublot No. 2 in Map Subdivision of Permanent Parcel No. 312-33-029, of original Rockport Township Lot No. 61, Section No. 21, as shown by the recorded plat in Volume 225 of Maps, Page 105 of Cuyahoga County Records, and being bounded and described as follows:

Beginning in the westerly line of Hird Avenue, 50 feet wide, at the northeasterly corner of Sublot No. 2 of a Subdivision of Permanent Parcel No. 312-33-29 as recorded in Volume 225, Page 105 of Cuyahoga County Map Records;

Thence South, 26.06 feet along the westerly line of Hird Avenue to a point which is 20 feet, measured at right angles from the southerly line of said Sublot No. 2;

Thence N 83 degrees 25' 50" W, 150.33 feet along a line parallel with and 20 feet northerly, measured at right angles, from the southerly line of said Sublot No. 2 to an angle point therein;

Thence S 89 degrees 30' 30" W, 128.10 feet continuing along said parallel line to its intersection with the southerly prolongation of the most westerly east line of said Sublot No. 2;

Thence N 0 degrees 32' 45" W, 90.01 feet along said prolonged line to an angle point in the east line of said Sublot No. 2;

Thence East, 8.63 feet along the east line of said Sublot No. 2 to the northwesterly corner of Sublot No. 1 in said subdivision;

Thence S 0 degrees 29' 30" E, 65.00 feet along the westerly line of said Sublot No. 1 to the southwesterly corner thereof;

Thence East 108.00 feet along the southerly line of said Sublot No. 1 to the southeasterly corner thereof;

Thence S 0 degrees 29' 30" E, 15.05 feet along the northerly line of said Sublot No. 2 to an angle point therein;

Thence East, 160.98 feet along said northerly line to the place of beginning and containing 0.1406 of an acre of land be the same more or less, but subject to all legal highways.

PPN: 312-33-029

##### **PARCEL NO. 2:**

###### **Tract No. 1:**

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio and known as being all of Sublots Nos. 43 and 44 in Lapham and Hird's Subdivision of as part of original Rockport Township Section No. 21 as shown by the recorded plat in Volume 30 of Maps, Page 24 of Cuyahoga County Records, and a part of original Rockport Township Section No. 21, together forming a parcel of land

bounded and described as follows:

Beginning on the Westerly line of Hird Street, at the Southeasterly corner of Sublot No. 43; Thence Northerly along the Westerly line of Hird Street 80 feet (said Westerly line being also the Easterly line of said Sublots Nos. 43 and 44), to the Northeasterly corner of Sublot No. 44;

Thence Westerly along the Northerly line of said Sublot No. 44; And along the Westerly prolongation thereof, 161.68 feet Thence Southerly 80 feet to a point (said point being distant Westerly, measured along the Westerly prolongation and the Southerly line of said Sublot No. 43, 10.32 feet from the Southwesterly corner of said Sublot No. 43); Thence Easterly along the Westerly prolongation and the Southerly line of said Sublot No. 43, 160.99 feet to the place of beginning.

Subject to and excepted from the general warranty covenants are zoning ordinances, if any, taxes and assessments, both general and special, not yet due and payable, and any reservations, restrictions, easements, and conditions of record.

Tract No. 2:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being part of original Rockport Township Section Number 21 and bounded and described as follows:

Beginning at the Northwesterly corner of a parcel of land conveyed to Donald T. O'Shea and Margaret A. O'Shea by deed recorded in Volume 14217, Page 45 of Cuyahoga County Records, said point being distant Westerly, measured along the Northerly line of said land, 161.68 feet from its intersection with the Westerly line of Hird Avenue, 50 feet wide; Thence Westerly along a Northerly line of a parcel of land conveyed to Malley Realty Company by deed recorded in Volume 13644, Page 497 of Cuyahoga County Records, 108.00 feet to a point; Thence Southerly parallel with the Westerly line of said land conveyed to Donald T. O'Shea and Margaret A. O'Shea 65.00 feet to a point; Thence Easterly parallel with the said Northerly line of said land conveyed to Malley Realty Co. 108.00 feet to a point in the said Westerly line of Donald T. O'Shea and Margaret A. O'Shea; Thence Northerly along said Westerly line 65.00 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Said premises are also described as Sublot No. 1 in Map Volume 225, Page 105 of Cuyahoga County Records.

PPN: 312-33-030

**PHANTASY PARCELS:**

PARCEL NO. 1:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and known as being part of Sublots Nos. 41 and 42 in the Lapham and Hird's Subdivision of a part of Original Rockport Township Section No. 21, Lot No. 61, as shown by the recorded plat of said Subdivision in Volume 30 of Maps, Page 24 of Cuyahoga County Records, and part of Original Rockport Township Section No. 21, Lot 61, and together forming a parcel of land, bounded and described as follows:

Beginning at the intersection of the Northerly line of Detroit Avenue, with the Westerly line of Hird Avenue; thence Northerly along the Westerly line of Hird Avenue, 150 feet; thence Westerly parallel with the Northerly line of Detroit Avenue 150.11 feet to the Westerly line of said Sublot No. 41; thence

Westerly at right angles to the Westerly line of Sublot No. 41, about 51 feet to the Northeasterly corner of land conveyed to Jean Fletcher by deed dated July 1, 1915 and recorded in Volume 1695, Page 29 of Cuyahoga County Records; thence Southerly along the Easterly line of land so conveyed about 143.86 feet to the Northerly line of Detroit Avenue; thence Easterly along the Northerly line of Detroit Avenue about 200.11 feet to the place of beginning, as appears by said plat, be the same more or less, but subject to all legal highways.

PPN 312-33-014 & 312-33-015

PARCEL NO. 2:

A non exclusive easement for driveway, appurtenant to Parcel No. 1, created in deed from Joseph Bomgardner and Kizzie Bomgardner to Joseph R. Walton recorded in Volume 1715, Page 138 of Cuyahoga County Records as corrected by deed recorded in Volume 1766, Page 424 of Cuyahoga County Records and amended by Agreement Concerning Easement by and between The Horning Realty Company and Allen Holding Company recorded November 19, 1930, in Volume 3984, Page 460 of Cuyahoga County Records, over the following described premises:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and bounded and described as follows:

Beginning in the Westerly line of Hird Avenue at a point distant Northerly 150 feet from the intersection of said Westerly line of Hird Avenue with the Northerly line of Detroit Avenue;

Thence Westerly parallel with the Northerly line of Detroit Avenue, 151 41/100 feet to the westerly line of said Sublot number 41;

Thence Northerly at right angles with the Westerly line of said Sublot, 50 58/100 feet to the Northeasterly corner of premises conveyed to Jean Fletcher by deed recorded in Volume 1695, Page 29, Cuyahoga County Records;

Thence Northerly at right angles with said last described line 10 feet;

Thence Easterly at right angles with the Westerly line of said Sublot No. 41 in Lapham and Hird's Subdivision, 50 58/100 feet to the Westerly line of said Sublot Number 41 in Lapham and Hird's Subdivision;

Thence continuing Easterly at right angles with the Westerly line of said Sublot Number 41 in Lapham and Hird's Subdivision 0 61/100 feet,

Thence Easterly parallel with the Northerly line of Detroit Avenue, 150 67/100 feet to the Westerly line of Hird Avenue;

Thence Southerly along the Westerly line of Hird Avenue, 10 07/100 feet to the beginning.

**EXHIBIT B**

**City TIF Ordinance**

**EXHIBIT C**

**FORM OF WRITTEN REQUISITION**

No. \_\_\_\_

(For Cost of Work)

To: City of Lakewood, Ohio

Attention: \_\_\_\_\_, \_\_\_\_\_

Subject: Written Requisition for Costs of Development pursuant to the terms of the Service Agreement dated March [ ], 2022 (the "Agreement"), by and between the City of Lakewood, Ohio, and WEST 117 DEVELOPMENT LLC, (the "West 117 Developer"), WEST 117 DEVELOPMENT FIELDHOUSE LLC, (the "Fieldhouse Developer"), and WEST 117 DEVELOPMENT PHANTASY LLC (the "Phantasy Developer," and together with the West 117 Developer and the Fieldhouse Developer, the "Developers")

You are hereby requested to approve the amount of \$\_\_\_\_\_ as Cost of the Development for the purposes set forth in Item I attached hereto. Unless otherwise defined herein, all capitalized terms set forth but not defined in this Written Requisition have the respective meanings assigned to them in the Agreement.

The undersigned authorized representative of the West 117 Developer does hereby certify on behalf of the Developer that:

I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents relating to the matters covered by this Written Requisition;

The disbursement herein requested is for an obligation properly incurred, is a proper charge as a Cost of the Development (as defined in the Agreement), and has not been the basis of any previous reimbursement request;

The Developers are in material compliance with all provisions and requirements of the Agreement and the Development Agreement;

The reimbursement requested hereby does not include any amount which is being retained under any holdbacks or retainages provided for in any applicable agreement;

The Developers have, or the appropriate parties on the Developer's behalf has, asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to the Development or any part thereof which warranties have vested in the Developers;

The Developers certify that (i) there is not any attested account claim from any subcontractor, material supplier or laborer who has performed labor or work or has furnished materials for the Development for which reimbursement is requested pursuant to this Written Requisition; or (ii) Developers have provided security discharging any known attested account claims.

EXECUTED this day of \_\_\_\_\_, 202\_.

West 117 Development, LLC,  
an Ohio limited liability company

By: BVF, LLC,  
an Ohio limited liability company  
Its: Manager

By: \_\_\_\_\_  
Betsy V. Figgie, its Member/Manager



ITEM I

Requisition No. \_\_\_\_\_ for the Development

Pay to \_\_\_\_\_

Amount \$ \_\_\_\_\_

For Account of:

Account Number:

Wiring Instructions:

For the purpose of reimbursing the following payments previously paid by the Developer for the Costs of the Development:

Name of Vendor	Service Rendered	Time Period	Cost of Service Rendered
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1.

2.